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August 14, 1978

His Excellency, Meldrim Thomson, Jr.
Governor of the State of New Hampshire
State House
Concord, New Hampshire 03301

Your Excellency:

You have asked for our opinion on two questions pertaining to House Bill 69, an act establishing a termination schedule for use under the "Sunset Act." These two questions are: first, whether the Legislature may abolish agencies of the Executive Branch which have been established by the Legislature; and second, whether the Legislature may abolish agencies established by executive order of the Governor.

With respect to the first of these questions, we are of the opinion that since the Legislature has established agencies of the Executive Branch such as the Department of Health and Welfare by statute, it may also abolish those same agencies since the power to establish would seem to include the power to abolish. The second of the two questions you have raised is not so easily answered since the office of the Governor is a co-equal branch with the Legislature. However, it is our opinion that offices which have been established within the office of the Governor by executive order and not by the Legislature probably may not be abolished by the General Court without violating the constitutional doctrine of separation of powers.

We must add a caveat to this opinion. Due to the timing of your request, we have not been able to conduct more than a cursory review of the constitutional and/or statutory provisions




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applicable to your questions. In the event that you should decide to veto House Bill 69 on the basis of its possible unconstitutionality, it may be advisable to suggest to the General Court that they seek an advisory opinion from the Supreme Court on these questions.

I trust that this is responsive to your inquiry. If we can be of further assistance to you please let us know.

Respectfully,



Thomas D. Rath
Attorney General



Wilbur A. Glahn, III
Assistant Attorney General

WAG/smg